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No. 75-1690

In the Supreme Court of the United States

OCTOBER TERM, 1977

JAMES PARHAM, INDIVIDUALLY AND AS COMMISSIONER OF DEPARTMENT OF HUMAN RESOURCES, ET AL., APPELLANTS

v.

J. L. AND J. R., MINORS, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

MOTION OF THE UNITED STATES FOR LEAVE TO FILE BRIEF AMICUS CURIAE

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The Solicitor General, on behalf of the United States, moves this Court for leave to file a brief as *amicus curiae* after the time limit specified by Rule 42(2). Cf. Rule 42(4).

1. This case presents important issues concerning the method by which parents and guardians may seek mental health treatment for minors within their custody, as well as the obligations of the State to those minors placed with them for care. This is the second time in two terms that this Court has granted review of a case challenging state procedures for the commitment of minors to mental hospitals. See *Kremens*

v. *Bartley,* 431 U.S. 119. The United States filed a brief *amicus curiae* in *Kremens.*

2. This case not only involves the issues involved in *Kremens, supra,* concerning initial commitment, but also raises questions concerning the State's responsibility for providing subsequent treatment and placement for the committed child. Those questions required consideration of novel and difficult legal and policy issues upon which the United States has not previously taken a position. The resolution of the issues in this case may well have a substantial impact on future development of the law concerning commitment and treatment of minors in mental health facilities. As explained at pp. 2–3 of our brief (lodged with the Clerk simultaneously with this motion), the United States has a substantial interest in safeguarding the rights of minors, as well as the rights of all those placed in mental institutions.

3. The briefs of many amici filed under Rule 42 of the Rules of this Court limit themselves to a discussion of legal issues before the Court, and leave the discussion and development of the facts to the parties. The United States, however, customarily finds it necessary to make an independent review of the record in order to address the questions presented in light of the facts in the case. In this case, discussion of several issues required extensive review of the complex evidence in the record. Since the United States did not participate in the proceedings before the district court, the facts were not available to the United

States until the 950-page appendix was prepared by the parties. A copy of that appendix was made available on August 18, 1977, to the attorney in the Civil Rights Division who prepared the initial draft of the brief for the United States. The attorney also found it necessary to examine those portions of the record not in the Appendix; the full record was filed with the Court on August 29, 1977. Analysis of the facts, legal research, and preparation of a memorandum to the Solicitor General recommending *amicus* participation (see 28 C.F.R. 0.20) [1] consumed the period between August 18 and October 14, when most of the brief was submitted to the appropriate supervisors in the Civil Rights Division for their review.[2] The draft was approved within the Civil Rights Division on October 19, 1977.

4. The draft brief prepared by the Civil Rights Division was submitted to the Office of the Solicitor General on October 19, 1977. Since the issues presented have an impact on operations of facilities operated by the Department of Health, Education, and Welfare, a copy of the draft brief was submitted to that agency for its comments. The final revisions and

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[1] The Assistant Attorney General for the Civil Rights Division sent his recommendation to the Solicitor General on September 28, 1977. An Assistant to the Solicitor General made suggestions which necessitated further legal research and adjustments in the arguments advanced in the Division draft.

[2] During this time, the attorney in the Civil Rights Division also took a short, previously scheduled vacation and prepared a brief for the United States as appellant in the Fifth Circuit.

preparation of the brief by my staff necessitated additional review of the record in this case and the legal issues involved, as well as consultation with the Civil Rights Division regarding development of positions and arguments acceptable to both offices.

5. The brief was completed by this office on November 8, 1977. Final cite-checking and printing procedures prevented filing until this date.

6. Action on this brief was completed by the Civil Rights Division and by this office in as expeditious a manner as possible, considering the need to review the complex record and to consider the novel and difficult issues presented. Oral argument has tentatively been scheduled for December 6, 1977. There is sufficient time, however, between the filing of this brief and oral argument for the parties to address the arguments made by the United States, if they wish to do so.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

NOVEMBER 1977.

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